

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROGER L. LYLE,

Plaintiff,

v.

Case No. 00-40280

Honorable Linda V. Parker

SHOEMUKER, *et al.*,

Defendants.

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**OPINION AND ORDER DENYING PLAINTIFF'S MOTION
FOR LEAVE TO FILE RULE 59(e) MOTION, OR IN THE
ALTERNATIVE, RULE 60(b) MOTION (ECF NO. 174)**

Plaintiff Roger L. Lyle, a Michigan state prisoner, filed a civil rights action pursuant to 42 U.S.C. § 1983 on July 26, 2000. (ECF No. 1.) The district court dismissed his complaint for failure to exhaust administrative remedies on April 22, 2002, and the Sixth Circuit affirmed the decision on September 17, 2002. *Lyle v. Jackson*, 49 F. App'x 492, 493 (6th Cir. 2002). Between September 27, 2016 and October 24, 2016, Plaintiff filed six motions. This Court referred the motions to Magistrate Judge Anthony P. Patti. (ECF Nos. 148, 152.)

On March 7, 2017, Magistrate Judge Patti issued a Report & Recommendation ("R&R") recommending the Court deny Plaintiff's motions, as well as enjoin Plaintiff from filing further motions in this case without leave from the Court. (ECF No. 162.) In the R&R, Magistrate Judge Patti notes that Plaintiff

“has filed a myriad of motions and appeals attempting to reinstate the case” since 2002. (*Id.* at Pg. ID 386.) Plaintiff filed objections to the R&R. In an opinion and order entered on July 20, 2017, this Court adopted Magistrate Judge Patti’s R&R. (ECF No. 165.)

On August 3, 2017, Plaintiff filed a motion for leave to file a motion pursuant to Federal Rule of Civil Procedure 59(e), or in the alternative pursuant to Federal Rule of Civil Procedure 60(b). (ECF No. 166.) On October 25, 2017, the Court denied Plaintiff’s motion, noting that Plaintiff asserted the same arguments that this Court and the Sixth Circuit previously rejected and did not present any new information that would warrant a different treatment of his motions. (ECF No. 167.) On July 17, 2018, the Sixth Circuit affirmed the Court’s decision. (ECF No. 172.)

On November 12, 2019, Plaintiff filed the instant motion for leave to file a motion pursuant to Rules 59(e) and/or 60(b) based on “newly discovered evidence.” (ECF No. 174 at Pg. ID 462.) Under Rules 60(b)(2) and 59(e), relief based on “newly discovered evidence” can be granted only if the motion is filed within one year and 28 days, respectively, of the Court’s judgment. *See McDowell v. Dynamics Corp. of America*, 931 F.2d 380, 383 (6th Cir. 1991) (observing that a motion made more than one year after judgment may not be granted on grounds

listed under 60(b)(1), (2), or (3)); Fed. R. Civ. P. 59(e). Here, Plaintiff attempts to bring his motion well passed these deadlines.

Accordingly,

IT IS ORDERED that Plaintiff's motion for leave (ECF No. 174) is **DENIED**.

s/ Linda V. Parker
LINDA V. PARKER
U.S. DISTRICT JUDGE

Dated: December 18, 2019

I hereby certify that a copy of the foregoing document was mailed to counsel of record and/or pro se parties on this date, December 18, 2019, by electronic and/or U.S. First Class mail.

s/ R. Loury
Case Manager